

HOUSE No. 1314

By Ms. Wolf of Cambridge, petition of Alice K. Wolf relative to reducing Diesel emissions from certain construction vehicles. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT REDUCING DIESEL EMISSIONS FROM NON-ROAD CONSTRUCTION VEHICLES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 30 of the General Laws is hereby
2 amended by inserting after Section 39R the following new
3 section:

4 Section 39S. Use of ultra low sulfur diesel fuel and best
5 available technology in nonroad vehicles. For purposes of this
6 section only, the following terms shall have the following mean-
7 ings:

8 “Public entity” means the commonwealth, or political subdi-
9 vision thereof, including authority, department, or by any county,
10 city, town, district, or housing authority.

11 “Commissioner” means the commissioner of the Department
12 of Environmental Protection.

13 “Contractor” means any person, corporation, partnership,
14 joint venture, sole proprietorship, or other entity awarded a con-
15 tract pursuant to sections 38A½ to 38O, inclusive, of chapter 7
16 and any contract awarded or executed pursuant to section 11C of
17 chapter 25A, section 39M of chapter 30, or sections 44A to 44H,
18 inclusive, of chapter 149, which is for an amount or estimated
19 amount greater than one hundred thousand dollars.

20 “Motor vehicle” means any self-propelled vehicle designed
21 for transporting persons or property on a street or highway.

22 “Nonroad engine” means an internal combustion engine
23 (including the fuel system) that is not used in a motor vehicle or a

24 vehicle used solely for competition, or that is not subject to stan-
25 dards promulgated under section 7411 or section 7521 of title 42
26 of the United States code, except that this term shall apply to
27 internal combustion engines used to power generators, compres-
28 sors or similar equipment used in any construction program or
29 project.

30 “Nonroad vehicle” means a vehicle that is powered by a non-
31 road engine, fifty horsepower and greater, and that is not a motor
32 vehicle or a vehicle used solely for competition, which shall
33 include, but not be limited to, excavators, backhoes, cranes, com-
34 pressors, generators, bulldozers and similar equipment.

35 “Person” means any natural person, co-partnership, firm,
36 company, association, joint stock association, corporation or other
37 like organization.

38 “Public works contract” means a contract with a public entity
39 for a construction program or project involving the construction,
40 demolition, restoration, rehabilitation, repair, renovation, or abate-
41 ment of any building, structure, tunnel, excavation, roadway, park
42 or bridge; a contract with a public entity for the preparation for
43 any construction program or project involving the construction,
44 demolition, restoration, rehabilitation, repair, renovation, or abate-
45 ment of any building, structure, tunnel, excavation, roadway, park
46 or bridge; or a contract with a public entity for any final work
47 involved in the completion of any construction program or project
48 involving the construction, demolition, restoration, rehabilitation,
49 repair, renovation, or abatement of any building, structure, tunnel,
50 excavation, roadway, park or bridge.

51 “Ultra low sulfur diesel fuel” means diesel fuel that has a
52 sulfur content of no more than fifteen parts per million.

53 (b) (1) Any diesel-powered nonroad vehicle that is owned by,
54 operated by or on behalf of or leased by a public entity shall be
55 powered by ultra low sulfur diesel fuel.

56 (2) Any diesel-powered nonroad vehicle that is owned by,
57 operated by or on behalf of or leased by a public entity shall uti-
58 lize the best available technology for reducing the emission of
59 pollutants.

60 (c) (1) Any solicitation for a public works contract and any
61 contract entered into as a result of such solicitation shall include a
62 specification that all contractors in the performance of such con-

63 tract shall use ultra low sulfur diesel fuel in diesel-powered non-
64 road vehicles and all contractors in the performance of such con-
65 tract shall comply with such specification.

66 (2) Any solicitation for a public works contract and any con-
67 tract entered into as a result of such solicitation shall include a
68 specification that all contractors in the performance of such con-
69 tract shall utilize the best available technology for reducing the
70 emission of pollutants for diesel-powered nonroad vehicles and all
71 contractors in the performance of such contract shall comply with
72 such specification.

73 (d) (1) The commissioner shall make determinations, and
74 shall publish a list containing such determinations, as to the best
75 available technology for reducing the emission of pollutants to be
76 used for each type of diesel- powered nonroad vehicle to which
77 this section applies for the purposes of paragraph two of subdivi-
78 sion b and paragraph two of subdivision c of this section. Each
79 such determination, which shall be updated on a regular basis, but
80 in no event less than once every six months, shall be primarily
81 based upon the reduction in emissions of particulate matter and
82 nitrogen oxides associated with the use of such technology and
83 shall in no event result in an increase in the emissions of either
84 such pollutant. In determining the best available technology for
85 reducing the emission of pollutants, the commissioner shall select
86 technology from that which has been verified by the United States
87 Environmental Protection Agency or the California Air Resources
88 Board for use in nonroad vehicles or onroad vehicles where such
89 technology may also be used in nonroad vehicles, but the commis-
90 sioner may select technology that is not verified as such as is
91 deemed appropriate.

92 (2) No public entity or contractor shall be required to replace
93 best available technology for reducing the emission of pollutants
94 or other authorized technology utilized for a diesel-powered non-
95 road vehicle in accordance with the provisions of this section
96 within three years of having first utilized such technology for such
97 vehicle.

98 (e) A public entity shall not enter into a public works contract
99 subject to the provisions of this section unless such contract per-
100 mits independent monitoring of the contractor's compliance with
101 the requirements of this section and requires that the contractor

102 comply with section 39S of this code. If it is determined that the
103 contractor has failed to comply with any provision of this section,
104 any costs associated with any independent monitoring incurred by
105 the city shall be reimbursed by the contractor.

106 (f) (1) The provisions of paragraph one of subdivision b of
107 this section shall apply to all diesel-powered nonroad vehicles that
108 are owned by, operated by or on behalf of or leased by a public
109 entity and the provisions of paragraph one of subdivision c of this
110 section shall apply to all public works contracts six months after
111 the effective date of this section.

112 (2) The provisions of paragraph two of subdivision b of this
113 section shall apply to all diesel-powered nonroad vehicles that are
114 owned by, operated by or on behalf of or leased by a public entity
115 and the provisions of paragraph two of subdivision c of this
116 section shall apply to any public works contract that is valued at
117 two million dollars or more one year after the effective date of this
118 section.

119 (3) The provisions of paragraph two of subdivision c of this
120 section shall apply to all public works contracts eighteen months
121 after the effective date of this section.

122 (g) (1) On or before January 1, 2008, and every succeeding
123 January 1, the commissioner shall publish a report on the use of
124 ultra low sulfur diesel fuel in diesel-powered nonroad vehicles
125 and the use of the best available technology for reducing the emis-
126 sion of pollutants and such other authorized technology in accor-
127 dance with this section for such vehicles by public entities during
128 the immediately preceding fiscal year. This report shall include,
129 but not be limited to (i) the total number of diesel-powered non-
130 road vehicles owned by, operated by or on behalf of or leased by
131 each public entity or used to fulfill the requirements of a public
132 works contract for each public entity; (ii) the number of such non-
133 road vehicles that were powered by ultra low sulfur diesel fuel;
134 (iii) the number of such nonroad vehicles that utilized the best
135 available technology for reducing the emission of pollutants,
136 including a breakdown by vehicle model and the type of tech-
137 nology used for each vehicle; (iv) all findings and waivers, and
138 renewals of such findings and waivers, issued pursuant to para-
139 graph one or paragraph three of subdivision j or subdivision l of
140 this section, which shall include, but not be limited to, all specific

141 information submitted by a public entity or contractor upon which
142 such findings, waivers and renewals are based and the type of
143 such other authorized technology, if any, utilized in accordance
144 with this section in relation to each finding, waiver and renewal,
145 instead of the best available technology for reducing the emission
146 of pollutants.

147 (h) This section shall not apply:

148 (1) where federal or state funding precludes the public entity
149 from imposing the requirements of this section; or

150 (2) to purchases that are emergency procurements pursuant to
151 section 8 of chapter 30B of the General Laws.

152 (i) Paragraph one of subdivision b and paragraph one of sub-
153 division c, as that paragraph applies to all contractors' duty to
154 comply with the specification, of this section shall not apply to a
155 public entity or contractor in its fulfillment of the requirements of
156 a public works contract for such agency where such agency makes
157 a written finding, which is approved, in writing, by the commis-
158 sioner, that a sufficient quantity of ultra low sulfur diesel fuel, is
159 not available to meet the requirements of paragraph one of subdivi-
160 sion b or paragraph one of subdivision c of this section, pro-
161 vided that such agency or contractor in its fulfillment of the
162 requirements of a public works contract for such agency, to the
163 extent practicable, shall use whatever quantity of ultra low sulfur
164 diesel fuel. Any finding made pursuant to this subdivision shall
165 expire after sixty days, at which time the requirements of para-
166 graph one of subdivision b and paragraph one of subdivision c of
167 this section shall be in full force and effect unless the public entity
168 renews the finding in writing and such renewal is approved by the
169 commissioner.

170 (j) Paragraph two of subdivision b and paragraph two of sub-
171 division c, as that paragraph applies to all contractors 'duty to
172 comply with the specification, of this section shall not apply:

173 (1) to a diesel-powered nonroad vehicle where a public entity
174 makes a written finding, which is approved, in writing, by the
175 commissioner, that the best available technology for reducing the
176 emission of pollutants as required by those paragraphs is unavail-
177 able for such vehicle, in which case such agency or contractor
178 shall use whatever technology for reducing the emission of pollu-
179 tants, if any, is available and appropriate for such vehicle; or

180 (2) to a diesel-powered nonroad vehicle that is used to satisfy
181 the requirements of a specific public works contract for fewer than
182 five calendar days.

183 (k) In determining which technology to use for the purposes
184 of paragraph one of subdivision k of this section, a public entity or
185 contractor shall consider the reduction in emissions of particulate
186 matter and nitrogen oxides associated with the use of such tech-
187 nology, which shall in no event result in an increase in the emis-
188 sions of either such pollutant.

189 (l) Any finding or waiver made or issued pursuant to para-
190 graph one of subdivision k of this section shall expire after one
191 hundred eighty days, at which time the requirements of paragraph
192 two of subdivision b and paragraph two of subdivision c of this
193 section shall be in full force and effect unless the public entity
194 renews the finding, in writing, and the commissioner approves
195 such finding, in writing, or the commissioner renews the waiver,
196 in writing.

197 (m) Any contractor who violates any provision of this section,
198 except as provided in subdivision o of this section shall be liable
199 for a civil penalty between the amounts of one thousand and ten
200 thousand dollars, in addition to twice the amount of money saved
201 by such contractor for failure to comply with this section.

202 (n) No contractor shall make a false claim with respect to the
203 provisions of this section to a public entity. Where a contractor
204 has been found to have done so, such contractor shall be liable for
205 a civil penalty of twenty thousand dollars, in addition to twice the
206 amount of money saved by such contractor in association with
207 having made such false claim.

208 (o) This section shall not apply to any public works contract
209 entered into or renewed prior to the effective date of this section.

210 (p) Nothing in this section shall be construed to limit the
211 public entity's authority to cancel or terminate a contract, deny or
212 withdraw approval to perform a subcontract or provide supplies,
213 issue a non-responsibility finding, issue a non-responsiveness
214 finding, deny a person or entity pre-qualification as a vendor, or
215 otherwise deny a person or entity public entity business.